


Realignment is not required when there is an “actual and substantial conflict” between the parties - even if it is not necessarily the primary dispute. Universal Underwriters Ins. Co. v. Wagner, 367 F.2d 866, 870 (8th Cir. 1966). A court will normally not realign parties unless the plaintiff no longer retains the burden to prove at least one of its claims. See Anheuser-Busch,

Inc. v. John Labatt Ltd., 89 F.3d 1339, 1344 (8th Cir. 1996). Because XPO has raised a substantial claim against Schnuck on which it bears the burden of proof, the Court finds realignment is not warranted in this case. Moreover, “[a] district court has wide discretion to set the order of proof at trial. Id. (citing Skogen v. Dow Chemical Co., 375 F.2d 692, 704, 706 (8th Cir. 1967)). Ordinarily, the trial court extends the privilege of opening and closing the case to the party that has the burden of proof. Id.

Accordingly,

IT IS HEREBY ORDERED that SMI’s Motion to Realign the Parties and/or For Modification of the Order of Proof at Trial [238] is **DENIED**.

Dated this 26th day of June, 2019.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE